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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

NAVNEET GHOTRA,

Petitioner,

v.

MICHAEL CHERTOFF, Secretary,
 Department of Homeland Security;
 NANCY ALCANTAR, Field Office
 Director, Immigration and Customs
 Enforcement; and ALBERTO
 GONZALES, Attorney General of the
 United States,

Respondents.

No. C 07-4428-MMC

**RESPONDENTS' OPPOSITION TO
 PETITIONER'S "MOTION FOR STAY OF
 EXECUTION AND APPLICATION FOR
 TEMPORARY STAY ORDER PENDING
 APPEAL"**

I. INTRODUCTION

The petitioner is a native and citizen of India who was ordered removed from the United States by an Immigration Judge on November 19, 2001. The Board of Immigration Appeals (BIA) affirmed the Immigration Judge's removal order on August 29, 2003. The United States Court of Appeals for the Ninth Circuit affirmed the BIA's decision on December 15, 2004. The petitioner did not leave the country as directed. The United States Immigration and Customs Enforcement (ICE) arrested the petitioner on April 18, 2007, in order to execute her removal order, but released the petitioner on an order of supervision while it made arrangements for her removal to India.

1 On August 27, 2007, the petitioner filed a petition for writ of habeas corpus alleging that her
2 former attorney provided her with ineffective assistance of counsel at the United States Court of
3 Appeals for the Ninth Circuit by failing to make two arguments in his appellate brief. This Court
4 denied the habeas petition on October 11, 2007, and entered judgment on October 15, 2007.

5 The petitioner filed a notice of appeal with the United States Court of Appeals on October 19,
6 2007.

7 II. DISCUSSION

8 As an initial matter, although the petitioner states that her application for a stay of removal is
9 made pursuant to Fed. R. App. P. 8(a)(1), which provides that a party must ordinarily move first in
10 the district court for a stay of the district court's judgment or order, the petitioner waited to file her
11 stay motion with this Court until after she filed her notice of appeal on October 19, 2007. See
12 Petitioner's Motion ¶ 23. This is significant because, "[a]s a general rule, the filing of a notice of
13 appeal divests a district court of jurisdiction. See *Stein v. Wood*, 127 F.3d 1187, 1189 (9th Cir.
14 1997). Although there are exceptions to the divestiture rule, see, e.g., *Stone v. INS*, 514 U.S. 386,
15 401-02 (1995), the petitioner has not offered an explanation of what exception to the divestiture
16 rule should apply to this case and why this Court has jurisdiction of her stay motion.

17 In any event, the petitioner has not shown "either (1) a probability of success on the merits and
18 the possibility of irreparable harm, or (2) that serious legal questions are raised and the balance of
19 hardships tips sharply in the moving party's favor." *Maharaj v. Ashcroft*, 295 F.3d 963, 966 (9th
20 Cir. 2002). First, the petitioner has not shown a probability of success on the merits or a serious
21 legal question for the reasons clearly stated in this Court's order. Second, the petitioner has not
22 shown the possibility of irreparable harm or that the balance of hardships tips sharply in her favor.
23 The petitioner's case has been considered by the Immigration Judge, the Board of Immigration
24 Appeals, and the United States Court of Appeals for the Ninth Circuit, and this Court, and has
25 been subject to removal since December 15, 2004, when the Ninth Circuit denied her petition for
26 review.

III. CONCLUSION

For the reasons set forth above, this Court should deny the petitioner's "motion for emergency stay of execution and application for temporary stay order pending appeal."

Date: October 30, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/
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